

September 24, 2007

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2007 SEP 24 PM 4:19

Lane Hudson

Washington, DC 20009

General Counsel  
Federal Election Commission  
999 E. Street, NW  
Washington, DC 20463

MUR # 5942

2007 SEP 24 P 4:35

Dear Counsel:

This is a formal complaint against the Rudy Giuliani Presidential Committee, Inc. for the receipt of corporate soft money contribution in excess of the limits established by the Federal Elections Campaign Act of 1971 and the Bipartisan Campaign Reform Act of 2002. The information in this complaint is derived from publicly available reports on the internet and falls under 2 U.S.C. 441 B and 11 CFR S 114.2.

In response to an advertisement purchased by Moveon.org Political Action on September 19, 2007, the Giuliani Campaign purchased an advertisement to run in the September 14 publication of the *New York Times*. Both Moveon.org Political Action and the Giuliani Campaign paid \$64,575 for their respective ads. This ad quote is known as the 'standby rate' because the day of publication and its placement are not guaranteed.

In a September 23, 2007 newspaper column, Public Editor of the *New York Times*, Clark Hoyt, admitted that the New York Times made a mistake in charging MoveOn.org the standby rate:

Catherine Mathis, vice president of corporate communications for The Times, said, "We made a mistake." She said the advertising representative failed to make it clear that for that rate The Times could not guarantee the Monday placement but left MoveOn.org with the understanding that the ad would run then. She added, "That was contrary to our policies."

MoveOn.org responded to the column by saying this on September 23:

Now that the *Times* has revealed this mistake for the first time, and while we believe that the \$142,083 figure is above the market rate paid by most organizations, out of an abundance of caution we have decided to pay that rate for this ad. We will therefore wire the \$77,083 difference to the *Times*...

In the same column, Mr. Hoyt has this to say about the advertisement purchased by Mr. Giuliani:

In the fallout from the ad, Rudolph Giuliani, the former New York mayor and a Republican presidential candidate, demanded space in the following Friday's *Times* to answer MoveOn.org. He got it — and at the same \$64,575 rate that MoveOn.org paid.

According to the *New York Times'* own policy, Mr. Giuliani should have paid the fixed-date rate instead of the

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standby rate. Therefore, the difference, \$77,083 is an in-kind corporate contribution, which far exceeds the limits allowed by law. Now that he has knowledge that his campaign is in receipt of an illegal \$77,083 contribution from the *New York Times*, it is incumbent on Mr. Giuliani to repay the difference. If he does not, that is not just a violation of the law but a betrayal of the public trust at a time when Americans want integrity from our leaders.

When Mr. Giuliani's campaign was called on to pay the difference, therefore avoiding a violation of law, his campaign declined to do so.

Respectfully submitted,



Lane Hudson

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**The New York Times**

NY TIMES PRINTING & POSTAGE  
SPC-MC000 0\*

September 23, 2007

THE PUBLIC EDITOR

## Betraying Its Own Best Interests

By CLARK HOYT

FOR nearly two weeks, The New York Times has been defending a political advertisement that critics say was an unfair shot at the American commander in Iraq.

But I think the ad violated The Times's own written standards, and the paper now says that the advertiser got a price break it was not entitled to.

On Monday, Sept. 10, the day that Gen. David H. Petraeus came before Congress to warn against a rapid withdrawal of troops, The Times carried a full-page ad attacking his truthfulness.

Under the provocative headline "General Petraeus or General Betray Us?" the ad, purchased by the liberal activist group MoveOn.org, charged that the highly decorated Petraeus was "constantly at war with the facts" in giving upbeat assessments of progress and refusing to acknowledge that Iraq is "mired in an unwinnable religious civil war."

"Today, before Congress and before the American people, General Petraeus is likely to become General Betray Us," MoveOn.org declared.

The ad infuriated conservatives, dismayed many Democrats and ignited charges that the liberal Times aided its friends at MoveOn.org with a steep discount in the price paid to publish its message, which might amount to an illegal contribution to a political action committee. In more than 4,000 e-mail messages, people around the country raged at The Times with words like "despicable," "disgrace" and "treason."

President George W. Bush called the ad "disgusting." The Senate, controlled by Democrats, voted overwhelmingly to condemn the ad.

Vice President Dick Cheney said the charges in the ad, "provided at subsidized rates in The New York Times" were "an outrage." Thomas Davis III, a Republican congressman from Virginia, demanded a House investigation. The American Conservative Union filed a formal complaint with the Federal Election Commission against MoveOn.org and The New York Times Company. [FreedomsWatch.org](#), a group recently formed to support the war, asked me to investigate because it said it wasn't offered the same terms for a response ad that MoveOn.org got.

Did MoveOn.org get favored treatment from The Times? And was the ad outside the bounds of acceptable political discourse?

The answer to the first question is that MoveOn.org paid what is known in the newspaper industry as a standby rate of \$64,575 that it should not have received under Times policies. The group should have paid

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\$142,083. The Times had maintained for a week that the standby rate was appropriate, but a company spokeswoman told me late Thursday afternoon that an advertising sales representative made a mistake.

The answer to the second question is that the ad appears to fly in the face of an internal advertising acceptability manual that says, "We do not accept opinion advertisements that are attacks of a personal nature." Steph Jespersen, the executive who approved the ad, said that, while it was "rough," he regarded it as a comment on a public official's management of his office and therefore acceptable speech for The Times to print.

By the end of last week the ad appeared to have backfired on both MoveOn.org and fellow opponents of the war in Iraq -- and on The Times. It gave the Bush administration and its allies an opportunity to change the subject from questions about an unpopular war to defense of a respected general with nine rows of ribbons on his chest, including a Bronze Star with a V for valor. And it gave fresh ammunition to a cottage industry that loves to bash The Times as a bastion of the "liberal media."

How did this happen?

Eli Pariser, the executive director of MoveOn.org, told me that his group called The Times on the Friday before Petraeus's appearance on Capitol Hill and asked for a rush ad in Monday's paper. He said The Times called back and "told us there was room Monday, and it would cost \$65,000." Pariser said there was no discussion about a standby rate. "We paid this rate before, so we recognized it," he said. Advertisers who get standby rates aren't guaranteed what day their ad will appear, only that it will be in the paper within seven days.

Catherine Mathis, vice president of corporate communications for The Times, said, "We made a mistake." She said the advertising representative failed to make it clear that for that rate The Times could not guarantee the Monday placement but left MoveOn.org with the understanding that the ad would run then. She added, "That was contrary to our policies."

Arthur Sulzberger Jr., the publisher of The Times and chairman of its parent company, declined to name the salesperson or to say whether disciplinary action would be taken.

Jespersen, director of advertising acceptability, reviewed the ad and approved it. He said the question mark after the headline figured in his decision.

The Times bends over backward to accommodate advocacy ads, including ads from groups with which the newspaper disagrees editorially. Jespersen has rejected an ad from the National Right to Life Committee, not, he said, because of its message but because it pictured aborted fetuses. He also rejected an ad from MoveOn.org that contained a doctored photograph of Cheney. The photo was replaced, and the ad ran.

Sulzberger, who said he wasn't aware of MoveOn.org's latest ad until it appeared in the paper, said: "If we're going to err, it's better to err on the side of more political dialogue. ... Perhaps we did err in this case. If we did, we erred with the intent of giving greater voice to people."

For me, two values collided here: the right of free speech -- even if it's abusive speech -- and a strong personal revulsion toward the name-calling and personal attacks that now pass for political dialogue, obscuring rather than illuminating important policy issues. For The Times, there is another value: the

protection of its brand as a newspaper that sets a high standard for civility. Were I in Jespersen's shoes, I'd have demanded changes to eliminate "Betray Us," a particularly low blow when aimed at a soldier.

In the fallout from the ad, Rudolph Giuliani, the former New York mayor and a Republican presidential candidate, demanded space in the following Friday's Times to answer MoveOn.org. He got it — and at the same \$64,575 rate that MoveOn.org paid.

Bradley A. Blakeman, former deputy assistant to President Bush for appointments and scheduling and the head of FreedomWatch.org, said his group wanted to run its own reply ad last Monday and was quoted the \$64,575 rate on a standby basis. The ad wasn't placed, he said, because the newspaper wouldn't guarantee him the day or a position in the first section. Sulzberger said all advocacy ads normally run in the first section.

Mathis said that since the controversy began, the newspaper's advertising staff has been told it must adhere consistently to its pricing policies.

*The public editor serves as the readers' representative. His opinions and conclusions are his own. His column appears at least twice monthly in this section.*

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# Newsday.com

## New York Times gave 'price break' on ad berating Petraeus

BY TOM BRUNE

[tom.brune@newsday.com](mailto:tom.brune@newsday.com)

11:33 PM EDT, September 23, 2007

WASHINGTON

The New York Times gave an unwarranted \$77,000 "price break" to liberal MoveOn.org on its Sept. 10 full-page ad berating Army Gen. David Petraeus after all, the newspaper admitted Sunday.

After two weeks of saying it had given no special discount, the Times' Public Editor Clark Hoyt revealed Sunday that the paper should have charged MoveOn.org a \$142,083 fixed-date rate instead of the \$64,575 "seven-day standby" rate it did.

MoveOn.org executive director Eli Pariser insisted his political action group thought it had gotten a standard rate when it paid \$65,000 for the ad, but said it would wire the Times the \$77,083 difference today.

The Times' admission is certain to revive the ad controversy just as it was dying out, and could affect a federal probe.

The American Conservative Union has filed a complaint with the Federal Election Commission, charging the Times' lower rate was an illegal campaign donation to MoveOn.org.

In his column yesterday, Hoyt said the Times also violated a policy against ads containing "attacks of a personal nature" by accepting the MoveOn.org ad copy, titled "General Petraeus or General Betray Us?"

"I think the ad violated The Times' own written standards, and the paper now says that the advertiser got a price break it was not entitled to," he said.

Times spokeswoman Catherine Mathis told Hoyt, "We made a mistake."

Mathis blamed the ad department.

Pariser told Hoyt that MoveOn.org called the Times on Friday, Sept. 7, asking for a rush ad for the

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following Monday when Petraeus would go to Capitol Hill to give his Iraq war report.

The ad representative said there was room Monday and it would cost \$65,000 – without saying that "standby rate" did not guarantee a certain day, but simply one day of the Times' choosing in a seven-day period.

Not only did the representative fail to spell that out, Mathis said, but he "left MoveOn.org with the understanding that the ad would run" that Monday.

Pariser called on Republican presidential candidate Rudy Giuliani, who demanded and got the same low rate from the Times for his own Sept. 14 ad attacking MoveOn.org, to also pay the more than \$77,000 difference.

But Giuliani spokeswoman Katie Levinson replied, "While we appreciate that The New York Times and MoveOn.org have both publicly acknowledged their sweetheart deal, no amount of money will make right this misguided ploy attacking a general in a time of war."

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**MOVEON.ORG POLITICAL ACTION COMMITTEE**

**For Immediate Release:**  
**Sunday, September 23, 2007**

**Statement by Bill Farter, MoveOn.org Political Action Executive Director, Receiving the New York Times Ad Rate Issue**

In the Public Editor column of today's New York Times, the Times' vice president admits that, without the knowledge or consent of MoveOn.org Political Action, the Times "made a mistake" in charging MoveOn its standby rate of \$85,000 for the advertisement run on Monday September 10. According to the Public Editor, the Times' vice president admitted that the company's advertising representative "failed to make it clear that for that rate the Times could not guarantee the Monday placement but left MoveOn.org with the understanding that the ad would run then." According to the Public Editor, "the group should have paid \$142,083."

Now that the Times has revealed this mistake for the first time, and while we believe that the \$142,083 figure is above the market rate paid by most organizations, out of an abundance of caution we have decided to pay that rate for this ad. We will therefore wire the \$77,083 difference to the Times tomorrow (Monday, September 24, 2007).

We call on Mayor Giuliani, who received exactly the same ad deal for the same price, to pay the corrected fee also.

The Public Editor's column makes crystal clear that at no time did MoveOn have any reason to believe that it was receiving from the Times anything other than the normal and usual charge for the advertisement. And there is no evidence of any kind that the error in quoting of rates was in any way based on the content of the advertisement or the identity of its sponsor. Of course, Moveon believed that it was engaged in an arms length negotiation regarding advertising rates with the Times and assumed that it was being quoted advertising prices consistent with the Times' usual and normal charge.

MoveOn continues, of course, to stand by the content of the advertisement and to urge citizens and their elected representatives in the Congress to focus on the continued dishonesty of the Bush Administration and the American blood and treasure being lost in a war for which the Administration has no exit strategy. Certainly that issue is more worthy of the attention of the electorate and the media than the mistake of an advertising representative or the wording of an advertisement.

###

Paid for by MoveOn.org Political Action, <http://political.moveon.org/>. Not authorized by any candidate or candidate's committee.

MoveOn.org Civic Action is a 501(c)(4) organization which primarily focuses on nonpartisan education and advocacy on important national issues. MoveOn.org Political Action is a federal political committee which primarily helps members elect candidates who reflect our values through a variety of activities aimed at influencing the outcome of the next election. MoveOn.org Political Action and MoveOn.org Civic Action are separate organizations.

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